

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

TOM DEFOE, a minor, by and through )  
his parent and guardian, PHIL DEFOE, )  
   )  
Plaintiff,                                 )  
   )  
v.   )                  No.: 3:06-cv-450  
   )                  (VARLAN/SHIRLEY)  
SID SPIVA, *et al.*,                     )  
   )  
Defendants.                                 )

**MEMORANDUM AND ORDER**

This is an action brought pursuant to 42 U.S.C. § 1983 in which plaintiff claims that his First Amendment rights were violated when he was suspended from school for wearing clothing bearing the image of a Confederate flag. Currently pending is the plaintiff's motion for summary judgment [Doc. 50]. Because plaintiff has failed to demonstrate that no question of material fact remains to be determined and that judgment should be entered in his favor, the motion will be denied.

Plaintiff has submitted portions of deposition testimony of officials of the Anderson County School System who indicate that they would continue the ban on clothing bearing the image of a Confederate flag even if they believed that such clothing was not the cause of incidents of racial unrest. [*See* Doc. 50-3 through 50-8.] On the other hand, there is substantial proof through affidavits that many of the Anderson County school officials have pointed out incidents of racial unrest at their respective schools, and that the wearing of such clothing reasonably could contribute to such unrest. [*See* Doc. 64.]

Accordingly, questions of material fact remain to be determined, and plaintiff's motion for summary judgment [Doc. 50] is **DENIED**.

**E N T E R :**

s/ Thomas A. Varlan  
UNITED STATES DISTRICT JUDGE